

General Corporate Commercial

Sub-Decree on the Implementation of Law on Investment

On 26 June 2023, the Royal Government of Cambodia adopted Sub-Decree No. 139 ANKr.BK on the Implementation of Law on Investment ("**Sub-Decree**"), which aims to implement the provisions of the Law on Investment promulgated on 15 October 2021 ("**Law on Investment**").

The Sub-Decree consists of 7 chapters and 28 articles, and applies to all qualified investment projects ("**QIPs**"), expanded QIPs ("**EQIPs**"), and guaranteed investment projects ("**GIPs**") (collectively referred to as "**Investment Projects**") registered with the Council for the Development of Cambodia ("**CDC**") or the Provincial-Municipal Investment Sub-Committees ("**Sub-Committees**").

This update provides some key features of the Sub-Decree as follows:

1. Investment Projects Registration

Any person (including an individual or legal entity) who intends to register and implement an Investment Project ("**Investor**") shall submit a proposal to the CDC or the Sub-Committees physically or through the information technology platform ([link](#)). Upon the submission of the proposal, the CDC or the Sub-Committees will review the proposal and issue, within 20 working days, a written registration certificate ("**Registration Certificate**"), tied to a bar code or QR code, or other technology system containing primary information, in hard copy or electronic form, if the following conditions are fulfilled:

Conditions of Investment Projects	QIPs	EQIPs	GIPs
It has specific investment site and head office.	✓		✓
It is not listed in the negative list of investment activities which are not eligible for incentives.	✓		✓
It is not managed or controlled by citizens of countries which are not members of ASEAN, not parties to agreements or treaties ratified by Cambodia, or do not have diplomatic relations with Cambodia.			✓
It is not submitted by an authorised representative on behalf of and for the benefit of foreigners in circumventing prohibitions against any business activities under Cambodian laws.			✓
It is an existing QIP.		✓	

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Conditions of Investment Projects	QIPs	EQIPs	GIPs
It is not the acquisition, sale or merger of other QIPs which are already entitled to incentives on income tax.		✓	
It is not an additional capital payment to fulfil the initial investment capital of QIPs.		✓	
Expansion capital is at least equivalent to the required minimum capital.		✓	

The issuance of the Registration Certificate does not exempt the Investment Projects from other applicable licensing requirements of relevant sectoral ministries/institutions.

The Investment Projects that have been nullified, dissolved or suspended due to non-compliance with proper procedures will not be allowed to be re-registered.

2. Reporting Obligations and Certificate of Compliance

An Investor who has obtained a Registration Certificate shall submit semester and annual reports within 20 calendar days following the completion of the tax declaration filing date to the CDC or the Sub-Committees. Based on these reports, the CDC or the Sub-Committees shall issue in the following year a Certificate of Compliance ("**COC**") to the Investor.

If the Investor fails to comply with this reporting obligation, they will not be issued the COC and will be subject to the loss of entitlement to the relevant investment incentives and guarantees.

3. Investment Incentives

The Sub-Decree provides further details of basic and additional incentives QIPs are entitled to as follows:

Basic Incentives

Any QIP is entitled to **either** of the two basic incentives and surplus basic incentives below.

Option 1	Option 2
<ul style="list-style-type: none"> Income tax exemption from the time of earning first revenue in accordance with categories of investment activities as follows: 	<ul style="list-style-type: none"> Eligibility to deduction of capital expenditure through special depreciation as stated in the applicable tax provisions;

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Option 1	Option 2
<ul style="list-style-type: none"> - Nine years for Activities in Category 1; - Six years for Activities in Category 2; and - Three years for Activities in Category 3. <ul style="list-style-type: none"> • After the expiry of the income tax exemption period, eligibility to income tax at a progressive rate proportional to the total applicable tax amounts as follows: <ul style="list-style-type: none"> - 25% for the first two years; - 50% for the next two years; and - 75% for the last two years. • Prepayment of tax on income exemption for a specific period of time in accordance with categories of investment activities as follows: <ul style="list-style-type: none"> - Nine years for Activities in Category 1; - Six years for Activities in Category 2; and - Three years for Activities in Category 3. • Minimum tax exemption if an independent audit report is provided; and • Export customs duty exemption except otherwise provided in other laws and regulations. 	<ul style="list-style-type: none"> • Eligibility for up to 200% deduction on other significant expenses (<i>including on skillful training for Cambodian employee to replace foreign employee, use of accounting book via information technology platform, overseas training scholarship for Cambodian employee, and study-research-development and hiring foreign expert to train on new technologies and industry 4.0</i>) in accordance with category of investment activities as follows: <ul style="list-style-type: none"> - Nine years for Activities in Category 1; - Six years for Activities in Category 2; and - Three years for Activities in Category 3. • Prepayment of tax on income exemption for a specific period of time, in accordance with category of investment activities as follows <ul style="list-style-type: none"> - Nine years for Activities in Category 1; - Six years for Activities in Category 2; and - Three years for Activities in Category 3. • Minimum tax exemption if an independent audit report is provided; and • Export customs duty exemption except otherwise provided in other laws and regulations.
Surplus Basic Incentives	
<ul style="list-style-type: none"> • QIP: eligible for customs duty, special tax and value-added tax ("VAT") exemptions for the import of construction materials, construction equipment, and production equipment used in its production chain. 	

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Option 1	Option 2
<ul style="list-style-type: none"> <li data-bbox="204 629 1401 725">• Export or Supporting Export Industry QIP: in addition to the eligibility for exemptions for QIPs above, such QIPs are also eligible for customs duty, special tax and VAT exemptions for the import of production inputs. <li data-bbox="204 770 1401 1106">• Domestically-oriented QIP ("DOQIP"): <ul style="list-style-type: none"> <li data-bbox="252 837 1401 934">- DOQIP with investment activities listed in Annex IV of the Sub-Decree are eligible for customs duty, special tax and VAT exemptions for the import of production inputs used in its production chain. <li data-bbox="252 972 1401 1106">- The DOQIP having imported production inputs and paid relevant customs duty and taxes which is capable of directly exporting or supplying as production inputs to Export QIP shall obtain the refund of customs duty, special tax, and VAT, or keep such sums as credits for subsequent imports upon request. <li data-bbox="204 1151 1401 1247">• Investment activities listed in Annex III of the Sub-Decree: customs duty, special tax and VAT exemptions for the import of construction materials, construction equipment, and production equipment used in its production chain, but not tax incentives. 	

Additional Incentives

In addition to the basic incentives provided above, a QIP is also entitled to the following:

- VAT exemption (0% VAT) for purchases of locally-produced production inputs for the implementation of the QIP;
- Deduction of 150% from the tax base for any of the following activities:
 - i. Research, development and innovation;
 - ii. Human resource development through the provision of vocational training and skills to Cambodian workers/employees;
 - iii. Construction of accommodation, canteens or food courts where food is provided free of charge or sold at reasonable prices, nurseries and other facilities for workers/employees;
 - iv. Upgrading of machinery to serve the production chain;

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- v. Provision of welfare for Cambodian workers/employees, such as comfortable means of transportation to commute from their homes to factories, accommodation, food courts or canteens where food is provided free of charge or sold at reasonable prices, nurseries and other facilities; and
 - vi. Investment in or construction of treatment infrastructure for all types of waste.
- Eligibility for customs duty, special tax and VAT exemption for the import of construction materials and equipment for the construction of accommodation, nurseries, emergency rooms, food courts or canteens where food is provided free of charge or sold at reasonable prices exclusively for workers/employees of the QIP and within the investment project.

The EQIPs are entitled to incentives as follows:

- Income tax exemption for a QIP requesting for expansion in any of the below forms:
 - Expansion of existing production;
 - Expansion through product line diversification within the same lines;
 - Expansion through the use of new technologies that enhance productivity or protect the environment; and
 - Expansion in other forms approved by the Royal Government of Cambodia.
- Income tax exemption for a specific period of time from the expansion of the QIP following investment activities of the initial project and in accordance with the category of investment activities as follows:
 - Nine years for Activities in Category 1;
 - Six years for Activities in Category 2; and
 - Three years for Activities in Category 3.
- Income tax exemption equal to the total taxable income multiplied by the capital expansion rate;
- Prepayment of tax on income exemption in proportion to the capital expansion rate during the period of income tax exemption; and
- Minimum tax exemption if an independent audit report is provided.

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The QIPs of New Car Assembly/Installation which only supply domestic markets are entitled to incentives as follows:

- If the percentage of locally made materials and two of the specified conditions are fulfilled, the above QIPs are entitled to customs duty, special tax and VAT deduction of:
 - 50% for the use of components as a final product without further processing;
 - 70 % for the use of components as a final non-paint product;
 - 80 % for the use of non-weld and non-paint components; and
 - 90% for the use of non-pressure, non-bend, non-weld, and non-paint components.

4. After-care services for Investment Projects

The after-care services that are to be provided by the CDC or the Sub-Committees include but are not limited to the following:

- Assessing and researching on the situations, needs and challenges of Investment Projects or Investors;
- Disseminating, orienting, and raising awareness on the development of policies, law enforcement, legal instruments in relation to investment, data systems used for coordinating local supply chains, and general after-care services;
- Discussing and collaborating on the acceptance of approvals or permits, researching for strategic and potential investment sites, and developing human resources; and
- Resolving investment disputes for the benefit of related parties, and for fair competition and conducive climate for investment.

5. Acquisition, Sale or Merger of Investment Projects

As long as the acquisition, sale or merger of an Investment Project is not prohibited by applicable laws and regulations or by the Registration Certificate or concession agreements, the Investment Projects subject to such acquisition, sale or merger shall continue to be entitled to the relevant investment incentives, guarantees and protections, and shall continue to comply with the obligations as provided under the Law on Investment and the Sub-Decree, including the obligation to register by submission of request letter to the CDC or the Sub-Committees

Merger of Investment Projects is a combination of two or more Investment Projects by keeping one of their names or by giving a new name to the combined Investment Project. The combined Investment

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Project shall continue to be entitled to the relevant incentives, guarantees and protections, and shall continue to comply with the obligation to register by submission of request letter to the CDC or the Sub-Committees.

Investment Projects are considered to be completely acquired, sold or merged after a legal entity, which continues implementing the Investment Projects, obtains official approval and recognition of its new memorandum and articles of association from the CDC or the Sub-Committees.

6. Nullification of Investment Projects

The CDC or the Sub-Committees have the discretion to nullify Investment Projects for the following reasons:

- the inability of the Investor to continue the implementation of the Investment Project;
- the dissolution of the Investor by unanimous decision of shareholders;
- the dissolution of the Investor by the court;
- non-compliance with the Law on Investment and applicable regulations; or
- request of relevant ministries/institutions or the Investor.

7. Annexes of the Sub-Decree

There are ten Annexes attached to the Sub-Decree as follows:

- Annex I: Negative List of Investment Activities or Group of Investment Activities which are not Eligible for Incentives;
- Annex II: Classification List of Investment Activities;
- Annex III: List of Investment Activities or Group of Investment Activities which are only Eligible for Import Duties Exemption, but not Eligible for Tax Exemption;
- Annex IV: List of Investment Activities or Group of Investment Activities which are Eligible for Incentives on Production Inputs used for Domestically-oriented QIP;
- Annex V: Application Form for Registration of QIPs in the Kingdom of Cambodia;
- Annex VI: Application Form for Registration of EQIPs in the Kingdom of Cambodia;
- Annex VII: Application Form for Registration of GIPs in the Kingdom of Cambodia;
- Annex VIII and VIII: Registration Certificate of QIP; and
- Annex X: Request Form for After-care Services for Investment Projects.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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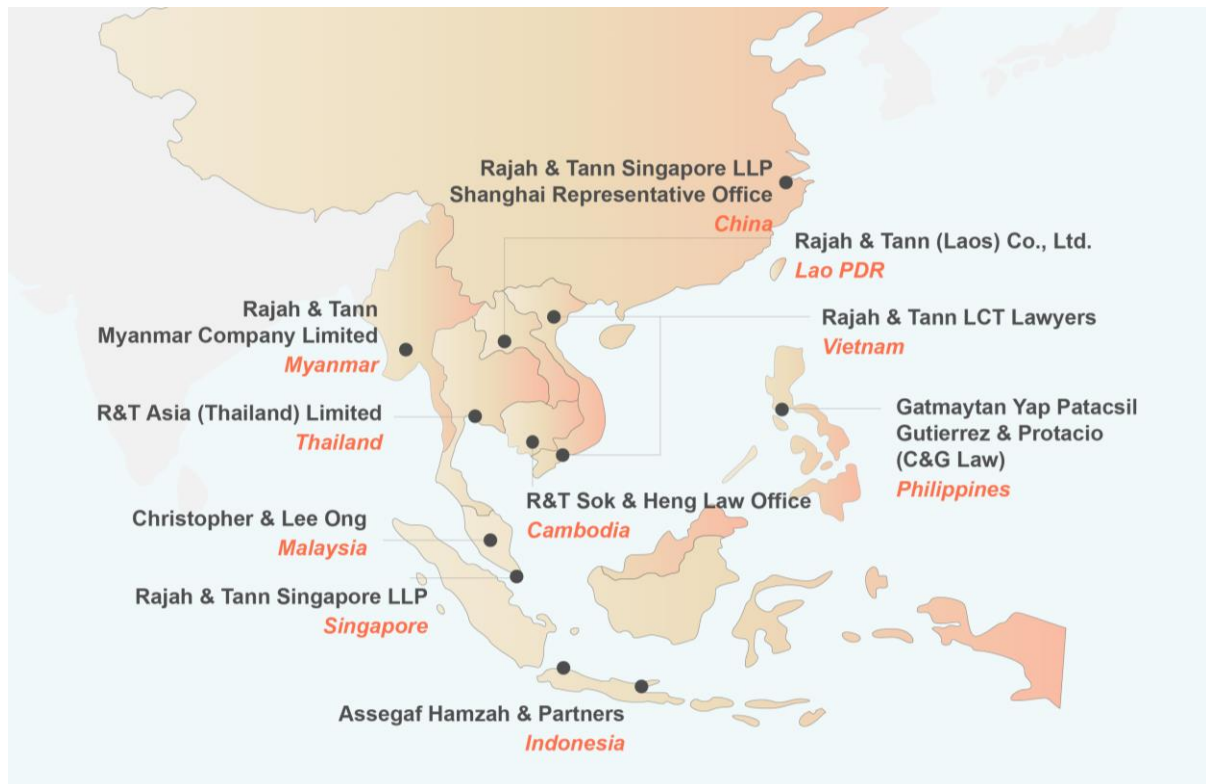
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